



GCE A LEVEL MARKING SCHEME

SUMMER 2024

**A LEVEL
LAW – UNIT 4
1150U40-1**

About this marking scheme

The purpose of this marking scheme is to provide teachers, learners, and other interested parties, with an understanding of the assessment criteria used to assess this specific assessment.

This marking scheme reflects the criteria by which this assessment was marked in a live series and was finalised following detailed discussion at an examiners' conference. A team of qualified examiners were trained specifically in the application of this marking scheme. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners. It may not be possible, or appropriate, to capture every variation that a candidate may present in their responses within this marking scheme. However, during the training conference, examiners were guided in using their professional judgement to credit alternative valid responses as instructed by the document, and through reviewing exemplar responses.

Without the benefit of participation in the examiners' conference, teachers, learners and other users, may have different views on certain matters of detail or interpretation. Therefore, it is strongly recommended that this marking scheme is used alongside other guidance, such as published exemplar materials or Guidance for Teaching. This marking scheme is final and will not be changed, unless in the event that a clear error is identified, as it reflects the criteria used to assess candidate responses during the live series.

GCE A LEVEL LAW
UNIT 4 - SUBSTANTIVE LAW PERSPECTIVES
SUMMER 2024 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Unit 4

The questions assess assessment objectives AO1 and AO3. The assessment objectives focus on the ability to demonstrate knowledge and understanding of legal rules and principles, and the ability to analyse and evaluate legal rules, principles, concepts and issues.

The structure of the mark scheme

The mark scheme for each question has two parts:

- indicative content which can be used to assess the quality of the specific response. The content is not prescriptive and candidates are not expected to mention all the material referred to. Examiners should seek to credit any further admissible evidence offered by the candidates.
- an assessment grid advising bands and associated marks that should be allocated to responses which demonstrate the characteristics needed in AO1 and AO3.

Stage 1 - Deciding on the band

Beginning at the lowest band, examiners should look at the learner's answer and check whether it matches the descriptor for that band. If the descriptor at the lowest band is satisfied, examiners should move up to the next band and repeat this process for each band until the descriptor matches the answer.

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content. Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

- The first stage for an examiner is to use both the indicative content and the assessment grid to decide the overall band.
- The second stage is to decide how firmly the characteristics expected for that band are displayed.
- Thirdly, a mark for the question is awarded.

Stage 2 - Deciding on the mark

During standardising (marking conference), detailed advice from the Principal Examiner on the qualities of each mark band will be given. Examiners will then receive examples of answers in each mark band that have been awarded a mark by the Principal Examiner. Examiners should mark the examples and compare their marks with those of the Principal Examiner.

When marking, examiners can use these examples to decide whether a learner's response is of a superior, inferior or comparable standard to the example. Examiners are reminded of the need to revisit the answer as they apply the mark scheme in order to confirm that the band and the mark allocated is appropriate to the response provided.

Indicative content is also provided for banded mark schemes. Indicative content is not exhaustive, and any other valid points must be credited. In order to reach the highest bands of the mark scheme a learner need not cover all of the points mentioned in the indicative content but must meet the requirements of the highest mark band. Where a response is not creditworthy, that is contains nothing of any significance to the mark scheme, or where no response has been provided, no marks should be awarded.

Section A

1. Analyse and evaluate whether the protection of human rights in the UK would be weakened or strengthened by the introduction of a Bill of Rights. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the protection of human rights. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the protection of human rights under the Human Rights Act 1998. Candidates are expected to consider and debate the full range of issues and limits of the Human Rights Act 1998, including an analysis and evaluation of the European Convention on Human Rights (ECHR), the impact of the Human Rights Act 1998 and the arguments surrounding the replacing of the Human Rights Act 1998 (HRA) with a Bill of Rights. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding whether the protection of human rights would be weakened or strengthened if the HRA were abolished and replaced with a Bill of Rights.

The response might consider issues such as:

- Scope of the European Convention on Human Rights. Residual rights - *Malone*
- HRA 1998 incorporates the rights given in the European Convention on Human Rights into UK law, with a few exceptions
- The HRA 1998 provides positive rights and not just residual liberties
- Rights under the European Convention on Human Rights are directly enforceable in the UK without need to apply to the European Court of Human Rights in Strasbourg
- Section 6 imposes a duty on all public authorities, including the courts, to act in a way which is compatible with Convention rights
- Section 2 imposes an obligation upon the courts to take account of Strasbourg jurisprudence
- Section 3 requires that all UK legislation must be interpreted in a way which is compatible with Convention rights so far as is possible to do so
- The courts have no power to overrule or refuse to apply primary legislation if it proves impossible to interpret it in a way which is compatible with Convention rights
- The higher courts have power to issue a declaration of incompatibility under s.4
- Section 10 provides a fast-track procedure whereby legislation which is not compatible can be amended. Evaluation – s.10(2).
- The government must include a statement that all proposed legislation is compatible with Convention rights, or state that it is not compatible but that the government intends to proceed with the Bill anyway: s.19. Credit for relevant citation. Evaluation – s.19(1)(b).
- Evaluation: HRA 1998 reflects the limitations as the European Convention on Human Rights e.g., only really protects civil and political rights; doesn't provide the kinds of rights people need in today's society such as right to housing, income, etc.
- Bill of Rights – scope, formation, proposals. Current political debate.
- Evaluation: would it be better to have a Bill of Rights? Current debates
- Only really protects people from actions of state and public authorities – the narrow scope of public authorities – today, the need for protection is often against powerful private institutions like the banks.
- The powers of the courts are circumscribed so that in the last analysis, government is not constrained by the HRA 1998.

- Alternatively, the powers of the courts allow them too much scope to interfere with the will of democratically elected bodies.
- The HRA 1998 cannot prevent any government from acting in violation of the rights it enshrines or even abolishing the HRA 1998 itself.
- Reference to cases such as *Malone V&T*, *McCann*.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	• Excellent, detailed knowledge and understanding of legal rules and principles relating to protection of human rights.
3	11 - 15	• Good knowledge and understanding of legal rules and principles relating to protection of human rights.
2	6 - 10	• Satisfactory knowledge and understanding of legal rules and principles relating to protection of human rights.
1	1 - 5	• Basic knowledge and understanding of legal rules and principles relating to protection of human rights.
	0	Response not creditworthy or not attempted

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25 - 30	• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the protection of human rights under the Human Rights Act 1998 and whether a BOR would be better. • Excellent evaluation of the debates surrounding the Human Rights Act 1998 and whether a BOR would be better, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	• Very good analysis of legal rules, principles, concepts and issues relevant to the protection of human rights under the Human Rights Act 1998 and whether a BOR would be better. • Very good evaluation of the debates surrounding the Human Rights Act 1998 and whether a BOR would be better, including a valid judgement. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	• Good analysis of legal rules, principles, concepts and issues relevant to the protection of human rights under the Human Rights Act 1998 and whether a BOR would be better. • Good evaluation of the debates surrounding the Human Rights Act 1998 and whether a BOR would be better, including reference to a judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7 - 12	• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the protection of human rights under the Human Rights Act 1998 and whether a BOR would be better. • Satisfactory evaluation of the debates surrounding the Human Rights Act 1998 and whether a BOR would be better, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	• Basic analysis of legal rules, principles, concepts and issues relevant to the protection of human rights under the Human Rights Act 1998 and whether a BOR would be better. • Basic evaluation of the debates surrounding the Human Rights Act 1998 and whether a BOR would be better. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.

2. Analyse and evaluate the extent to which the law relating to the police powers of stop and search, arrest, detention and interrogation provides adequate protection of a suspect's human rights. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the law on police powers. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the extent to which the law relating to the police powers of stop and search, arrest, detention and interrogation provides adequate protection of a suspect's human rights. Candidates are expected to consider and debate the full range of issues and arguments surrounding stop and search, arrest, detention and interrogation. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement the extent to which the law relating to the police powers of stop and search, arrest, detention and interrogation provides adequate protection of a suspect's human rights.

The response might consider issues such as:

- Police powers in light of human rights – removal of right to liberty, restriction on movement, etc. Also, articles 6, 3 and 2.
- The Act attempts to strike a fair balance between the exercise of power by those in authority and the rights of members of the public.
- Police and Criminal Evidence Act 1984, as amended provides the main law on police powers.
- Police powers to stop and search: PACE ss.1-3 and Code A.
- The Human Rights Court, in *Gillan and Quinton v United Kingdom*, agreed. The searches were unlawful interferences with Gillan's and Quinton's rights to respect for private life. The use of the powers to require a person to submit to a detailed search of themselves, their clothing and their personal belongings was a clear interference with their privacy.
- Need for reasonable suspicion that the officer will find stolen or prohibited articles: s.1. Evaluation of whether this provides an adequate safeguard – provision of reasonable suspicion. Subjective?
- Code A: need for a proper basis for suspicion; a stop and search should not be carried out just because of the suspect's appearance, ethnicity, etc.
- Procedural requirements of a valid search: ss. 2 and 3; *Osman v DPP*.
- Power of arrest: PACE s.24 and Code G + Serious Organised Crime and Police Act 2005.
- Grounds for arrest: reasonable suspicion that the suspect has committed, is committing, or is about to commit any offence, and reasonable belief that the arrest is necessary for one or more of the reasons given in s.24.
- Procedure on arrest: suspect must be informed of arrest and the reason (PACE s.28) and should be cautioned.
- Terrorism cases – is the extension of police powers lawful?
- Role of custody officer; rights of suspect when brought to the police station; Code C.
- Rights of suspect during detention: PACE s.56 – right to have someone informed of detention; s.58 – right to legal advice; when these rights can be delayed and the impact on suspect's human rights.
- Detention reviews: PACE s.40.
- Time limits on detention: PACE s.41 – 44. Lawful interference?

- Samples – DNA, fingerprints, etc. S and Marper v UK human rights case.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16-20	• Excellent, detailed knowledge and understanding of the legal rules and principles relating to police powers of stop, search, arrest, detention and interrogation.
3	11-15	• Good knowledge and understanding of the legal rules and principles relating to police powers of stop, search, arrest, detention and interrogation.
2	6 - 10	• Satisfactory knowledge and understanding of the legal rules and principles relating to police powers of stop, search, arrest, detention and interrogation.
1	1 - 5	• Basic knowledge and understanding of the legal rules and principles relating to police powers of stop, search, arrest, detention and interrogation.
	0	Response not creditworthy or not attempted.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25 - 30	• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the police powers of stop, search, arrest, detention and interrogation. • Excellent evaluation of the issues relating to the police powers of stop, search, arrest, detention and interrogation, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	• Very good analysis of legal rules, principles, concepts and issues relevant to the police powers of stop, search, arrest, detention and interrogation. • Very good evaluation of the issues relating to the police powers of stop, search, arrest, detention and interrogation, including a valid judgement. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	• Good analysis of legal rules, principles, concepts and issues relevant to the police powers of stop, search, arrest, detention and interrogation. • Good evaluation of the issues relating to the police powers of stop, search, arrest, detention and interrogation, including reference to a judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7 - 12	• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the police powers of stop, search, arrest, detention and interrogation. • Satisfactory evaluation of the issues relating to the police powers of stop, search, arrest, detention and interrogation, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	• Basic analysis of legal rules, principles, concepts and issues relevant to the police powers of stop, search, arrest, detention and interrogation. • Basic evaluation of the issues relating to the police powers of stop, search, arrest, detention and interrogation. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.

Section B

3. “The law on economic duress provides adequate safeguards against coercion when executing the contract.” Analyse and evaluate this statement. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to economic duress. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect how well the law on economic duress protects a party from unfair pressure from another party, including analysis and evaluation of relevant supporting case law. Candidates are expected to consider and debate the full range of issues and limits of economic duress. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding how well the law on economic duress protects a party from unfair pressure from another party.

The response might include issues such as:

- Explain the consequences of economic duress on a contract, that it becomes voidable
 - Explain that in order to claim economic duress there must be an unlawful threat, that this can be to breach of a contract, or to commit a tort, however ordinary commercial pressure will not amount to an unlawful threat or to duress, CTN Cash and Carry v Gallagher, William v Roffey
 - Explain that the threat must have impaired the consent of the other side and left the other party with no realistic alternative, Pao On v Lau Yiu Long
 - Explain that the party seeking to claim duress must have protested at the time and must not hesitate in taking legal action to avoid the contract Pao On,
- Candidates can answer this question by discussing different areas of the law on economic duress:
 - The nature of the threat:
 - Discuss the kinds of threat that can amount to duress and whether the doctrine should be extended to include lawful but unfair threats.
 - The effect of the threat:
 - Discuss the requirement that a party complains immediately, or risks being barred by ‘lapse of time’, that the unfair pressure may preclude taking immediate action for fear of further threats to breach the contract or actual non-performance.
- Discuss the effects of broadening the doctrine: • Discuss whether a general requirement to act fairly would be too vague in English law.
- Discuss whether the law at present aimed too much slanted towards protecting smaller parties at the expense of larger companies.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	Excellent, detailed knowledge and understanding of legal rules and principles relating to economic duress.
3	11 - 15	Good knowledge and understanding of legal rules and principles relating to economic duress.
2	6 - 10	Satisfactory knowledge and understanding of legal rules and principles relating to economic duress.
1	1 - 5	Basic knowledge and understanding of legal rules and principles relating to economic duress.
	0	Response not creditworthy or not attempted.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25-30	- Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to economic duress. - Excellent evaluation of the law relating to economic duress. - Excellent use of supporting case law and legal authorities. - Writing demonstrates accurate grammar, punctuation and spelling.
4	19-24	- Very good analysis of legal rules, principles, concepts and issues relevant to economic duress. - Very good evaluation of the law relating economic duress - Very good use of supporting case law and legal authorities. - Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13-18	- Good analysis of legal rules, principles, concepts and issues relevant to economic duress. - Good evaluation of the law relating to economic duress - Good use of supporting case law and legal authorities. - Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7-12	- Satisfactory analysis of legal rules, principles, concepts and issues relevant to economic duress. - Satisfactory evaluation of the law relating to economic duress - Satisfactory use of supporting case law and legal authorities. - Writing demonstrates some errors in grammar, punctuation and spelling.
1	1-6	- Basic analysis of legal rules, principles, concepts and issues relevant to economic duress. - Basic evaluation of the law relating to economic duress - Basic use of supporting case law and legal authorities. - Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted

4. “The fundamental principles surrounding offer and acceptance have not changed in line with changes in technology and society.” Analyse and evaluate this statement. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the rules for offer and acceptance. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the rules for communication of offer and acceptance, including analysis and evaluation of relevant supporting case law. In order to reach a judgment about this issue, candidates will offer a debate and come to a substantiated judgment regarding the fundamental principles surrounding offer and acceptance and whether they have changed in line with changes in technology and society. For example, a response may include reference to how the rules of communication of offer and acceptance have developed and whether the law is still unclear in this area.

The response might consider issues such as:

- Explain the difference between a bilateral offer and a unilateral offer *Carlill v Carbolic Smoke Ball Company*
- Explain the general rules for acceptance of a bilateral offer, that it must be unconditional and communicated, *Hyde v Wrench*
- Explain the postal rule of acceptance, acceptance being effective on posting, *Adams v Lindsell* Explain the exceptions to the postal rule, offer made by instant means, mistake made in posting, postal rule excluded, *Holwell Securities v Hughes*
- Explain the rules of acceptance by instant means, that the acceptance takes effect on arrival subject to sound business practice.
- Analysis and evaluation of Issues concerning offer: well-established nature of the rules; established in response to specific cases; pragmatic in application; problems with distinction between offer, invitation to treat, statements of price; problems with adaptation to modern methods of communication.
- Issues concerning acceptance: strengths as above; problems with distinction between acceptance, requests for further information, counteroffer; problems with particular modes of acceptance – postal rule, and modern forms of electronic communication.
- Suggestions for reform: proposals may concentrate on specific aspects, such as distinctions outlined above between offer and other communications, and acceptance and other communications.
- Relevant citation

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	Excellent, detailed knowledge and understanding of legal rules and principles relating to the rules for offer and acceptance.
3	11 - 15	Good knowledge and understanding of legal rules and principles relating to the rules for offer and acceptance.
2	6 - 10	Satisfactory knowledge and understanding of legal rules and principles relating to the rules for offer and acceptance.
1	1 - 5	Basic knowledge and understanding of legal rules and principles relating to the rules for offer and acceptance.
	0	Response not creditworthy or not attempted.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues.
5	25 - 30	• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the rules for offer and acceptance. • Excellent evaluation of whether the fundamental principles surrounding offer and acceptance have changed in line with changes in technology and society. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation, and spelling.
4	19 - 24	• Very good analysis of legal rules, principles, concepts and issues relevant to the rules for offer and acceptance. • Very good evaluation of whether the fundamental principles surrounding offer and acceptance have changed in line with changes in technology and society. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation, and spelling.
3	13 - 18	• Good analysis of legal rules, principles, concepts and issues relevant to the rules for offer and acceptance. • Good evaluation of whether the fundamental principles surrounding offer and acceptance have changed in line with changes in technology and society. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation, and spelling.
2	7 - 12	• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the rules for offer and acceptance. • Satisfactory evaluation of whether the fundamental principles surrounding offer and acceptance have changed in line with changes in technology and society. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation, and spelling.
1	1 - 6	• Basic analysis of legal rules, principles, concepts and issues relevant to the rules for offer and acceptance. • Basic evaluation of whether the fundamental principles surrounding offer and acceptance have changed in line with changes in technology and society. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation, and spelling.
	0	Response not creditworthy or not attempted.

Section C

5. “The law on theft is outdated and in need of reform”. Analyse and evaluate this statement. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the Theft Act 1968. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the Theft Act 1968.

Candidates are expected to consider and debate the full range of issues and arguments surrounding the Theft Act 1968, including an analysis and evaluation of whether it is in need of reform and the reform proposals. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding the extent to which Theft Act 1968 is outdated.

Responses may consider issues such as:

- Theft Act 1968 – s.1 – definition of theft as ‘dishonestly appropriating property belonging to another with the intention of permanently depriving the other of it.’
- The maximum sentence for theft is 7 years’ imprisonment
- Triable either way offence
- The actus reus of theft is:
 - Appropriation s.3 – bundle of rights (R v Morris (1923), Lawrence v MPC (1972), R v Gomez (2000), R v Hinks (2000)
 - Property s.4 – real property, intangible property, things in action, Oxford v Moss (1979), things that cannot be stolen
 - Belonging to another s.5 – possession or control, proprietary right or interest, own property - R v Turner No.2 (1971), obligation to use in a particular way, mistake
- **The mens rea of theft is:**
 - Dishonesty s.2 and Ghosh test (second limb now overruled in Ivey v Genting Casinos)
 - Intention to permanently deprive s.6 – Lloyd (1985), Velmuyl (1989)
 - Critical evaluation of the law on theft:
 - 1. Appropriation
 - The wide interpretation of the term ‘appropriation’ means that the defendant only needs to assume one of the rights of the owner and not all of them. This is why Morris was convicted for changing the price labels in a shop. The interpretation also allows the courts to convict shoplifters of theft before they have even left the shop.
 - 2. Property
 - Property is defined by the Theft Act 1968 (section 4(1)) yet it does provide some exceptions. These include land and confidential information. This led to the student being found not guilty of theft of the contents of the exam paper in Oxford v Moss (1979). The courts were also willing to ignore the civil law that states that body parts are not property. There are good reasons why body parts are not regarded as property as it means that it is illegal to sell them. However, in R v Kelly and Lindsay (1998) this rule was ignored in order to secure a conviction.
 - 3. Belonging to Another
 - R v Dyke and Munro (2002) the defendants were released due to a technicality as to whom the collection money belonged to. The trial judge

said that it was ok to convict if property belonged to persons unknown (the people who put money in the charity collection box) however, the Court of Appeal said that the money belonged to the charity.

- The fact that people are capable of stealing their own property can also be evaluated. It seems unfair in theory but the case of R v Turner (No. 2) (1971) offers a situation that may justify this rule.
- 4. Dishonesty
 - The case of R v Ghosh has led to a lot amount of criticism but these seem to have been addressed following the Ivey ruling.
- 5. Intention to Permanently Deprive
 - R v Velumyl (1989) and R v Lloyd and Others 1985) can be evaluated. It seems that Velumyl was convicted on a technicality and Lloyd was acquitted on a technicality. Although Velumyl should not be allowed to get away with taking money from the office safe, the court had to use their imagination to come up with the fact that it would not be exactly the same money that would be returned even though it would be exactly the same amount. Alternatively, Lloyd is able to escape charges for theft because the court does not think the films he copied had been reduced in value.

The **Law Commission Report 2002** and **Professor Griew's** article titled 'Dishonesty' 1985 contain many of the arguments surrounding this area of law. The fact that theft is defined in an Act of Parliament (**Theft Act 1968**) means that it is the job of judges to interpret the wording. The **Theft Act 1968** is worded very specifically and is often described as a technical law. This means that people can often be found guilty or not guilty of theft on a technicality due to the wording rather than what would be regarded as fair

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	Excellent, detailed knowledge and understanding of the legal rules and principles relating to the law on theft.
3	11 - 15	Good knowledge and understanding of the legal rules and principles relating to the law on theft.
2	6 - 10	Satisfactory knowledge and understanding of the legal rules and principles relating to the law on theft.
1	1 - 5	Basic knowledge and understanding of the legal rules and principles relating to the law on theft.
	0	Response not creditworthy or not attempted.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25 - 30	• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the law on theft. • Excellent evaluation of the extent to which law on theft is outdated and in need of reform, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	• Very good analysis of legal rules, principles, concepts and issues relevant to the law on theft. • Very good evaluation of the extent to which the law on theft is outdated and in need of reform, including a valid and substantiated judgement. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	• Good analysis of legal rules, principles, concepts and issues relevant to the law on theft. • Good evaluation of the extent to which the law on theft is outdated and in need of reform, including a valid and substantiated judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7 - 12	• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the law on theft. • Satisfactory evaluation of the extent to which the law on theft is outdated and in need of reform, including a valid and substantiated judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	• Basic analysis of legal rules, principles, concepts and issues relevant to the law on theft. • Basic evaluation of the extent to which the law on theft is outdated and in need of reform, including a valid and substantiated judgement. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.

6. "The defence of insanity bears little or no relationship to the medical understanding of mental disorders and is therefore capable of producing absurd results." Analyse and evaluate this statement. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the defence of insanity. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the extent to which insanity provides a defence to a criminal charge, including an analysis and evaluation of relevant supporting case law. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding the defence of insanity.

The response might consider issues such as:

- The defence of insanity under the M'Naghten Rules (1843) – everyone is presumed sane until the contrary is proved; to establish defence, must be proved that at the time of the offence D was labouring under such a defect of reasons, from disease of the mind, as (a) not to know the nature and quality of his act, or (b) if he did know it, not to know that he was doing what was wrong.
- Burden of proof on D; where insanity is raised during the trial, the prosecution is relieved of the duty of proving mens rea: A – G's Reference (No. 3 of 1998).
- Meaning of disease of the mind – Kemp, Bratty.
- Dividing line between insanity and automatism: difference between "internal" and "external" cases – Quick, Hennessey – a diabetic in a hyperglycemic coma due to low blood sugar is insane, whereas a diabetic in a hypoglycemic coma due to insulin is not.
- Sullivan – epilepsy may amount to insanity. □ Defect of reason does not include mere absent-mindedness: Clarke.
- Delusions – under M'Naghten Rules, D to be treated as if the facts he believed were real – so if he thinks V is threatening his life, he will have a defence, whereas if the delusion causes him to seek revenge, he will not – ignores the reality of conditions such as paranoia or inability to control an impulse.
- Nature and quality of the act refers to physical characteristics: Codere.
- Knowledge that the act is wrong means knowing it is legally wrong: Windle (courts apparently tend to ignore this).
- Disposal – candidates may mention Criminal Procedure (Insanity and Fitness to Plead) Act 1991 – give some discretion except in cases of murder.
- Candidates may discuss proposals for reform, e.g. Butler Committee, Law Commission's Draft Criminal Code.
- Possible reference to alternative defence of automatism.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	Excellent, detailed knowledge and understanding of the legal rules and principles relating to the defence of insanity.
3	11 - 15	Good knowledge and understanding of the legal rules and principles relating to defence of insanity.
2	6 - 10	Satisfactory knowledge and understanding of the legal rules and principles relating to defence of insanity.
1	1 - 5	Basic knowledge and understanding of the legal rules and principles relating to defence of insanity.
	0	Response not creditworthy or not attempted

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25 - 30	- Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the extent to which the defence of insanity bears little or no relationship to the medical understanding of mental disorders and is therefore capable of producing absurd results. - Excellent evaluation of the extent to which the defence of insanity bears little or no relationship to the medical understanding of mental disorders, and is therefore capable of producing absurd results, including a valid and substantiated judgement. - Excellent use of supporting case law and legal authorities. - Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	- Very good analysis of legal rules, principles, concepts and issues relevant to the extent to which the defence of insanity bears little or no relationship to the medical understanding of mental disorders and is therefore capable of producing absurd results. - Very good evaluation of the extent to which the defence of insanity bears little or no relationship to the medical understanding of mental disorders, and is therefore capable of producing absurd results, including a valid judgement. - Very good use of supporting case law and legal authorities. - Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	- Good analysis of legal rules, principles, concepts and issues relevant to the extent to which the defence of insanity bears little or no relationship to the medical understanding of mental disorders and is therefore capable of producing absurd results. - Good evaluation of the extent to which the defence of insanity bears little or no relationship to the medical understanding of mental disorders, and is therefore capable of producing absurd results, including reference to a judgement. - Good use of supporting case law and legal authorities. - Writing demonstrates generally accurate grammar, punctuation and spelling.

2	7 - 12	• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the extent to which the defence of insanity bears little or no relationship to the medical understanding of mental disorders and is therefore capable of producing absurd results. • Satisfactory evaluation of the extent to which the defence of insanity bears little or no relationship to the medical understanding of mental disorders and is therefore capable of producing absurd results including reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	• Basic analysis of legal rules, principles, concepts and issues relevant to the extent to which the defence of insanity bears little or no relationship to the medical understanding of mental disorders and is therefore capable of producing absurd results. • Basic evaluation of the extent to the defence of insanity bears little or no relationship to the medical understanding of mental disorders and is therefore capable of producing absurd results. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.